

Hariom Soni Vs. State of Madhya Pradesh and Others

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Court : Madhya Pradesh

Decided On : Oct-14-2011

Judge : The Honourablr Mr. Justice G.D. Saxena

Appeal No. : Criminal Revision No. 729 of 2011

Appellant : Hariom Soni

Respondent : State of Madhya Pradesh and Others

Judgement :

G.D. Saxena, J.

This revision petition under Section 53 of the Juvenile Justice (Care and Protection of Children) Act 2000, read with Sections 397/401 of the Code of Criminal Procedure 1973, has been preferred against an order dated 10th of August, 2011 in Sessions Case No. 25/2011 by the First Additional Sessions Judge Guna (M.P.), holding thereby the respondents/accused No. 2 and 3, namely, Shakir Mewati and Saddam Mewati as juveniles in exercise of powers conferred under Section 7-A of the said Act and the juveniles mentioned above were directed be tried by the Juvenile Justice Court at Guna.

(2) The facts necessary for the disposal of this revision are that on 6/12/10 at Town of Raghogarh, District Guna, one Deepak Soni, s/o Babulal Soni was reported to be missing from his house. Said report was recorded in Rojnamcha of the police Station. During search on 8/12/10, the dead body of Deepak Soni in a

gunny bag was found under beneath of culvert of ITI at Raghogarh. Accordingly, a Marg report was registered. During inquiry, it is gathered that the accused including respondents No.2 and 3 committed murder of missing Deepak Soni and caused the evidence of offence to be disappeared with an intention to suppress the real culprit from legal punishment. An F.I.R. was lodged and after investigation, the charge-sheet was filed before the criminal court. After committal, the sessions trial was commenced before the trial court at Guna. During trial, the respondents No. 2 and 3 filed the application stating that on the date of incident, i.e., 6th December 2010, they were below 18 years of age and being juveniles, it was requested that their case be referred to the Juvenile Justice Court for holding an inquiry regarding their age and trial before the board. The trial Court on the basis of the evidence of the respondents No 2 and 3 filed with the application and the evidence collected during such investigation, concluded that the respondents No. 2 and 3 were not juveniles. Being aggrieved by the order of the trial court, they preferred Cri.Rev.No.306/11, which was decided by this court vide order dated 28/6/11 in the following manner:-

“For the aforementioned reasons, the revision is allowed and the matter is remitted back to the trial court, heading the Board, with a direction to redetermine the age of the accused petitioners, as on the date of commission of the alleged offences, in accordance with law, enunciated above. In the event they are found to be juveniles within the meaning of the Act, they shall be dealt with accordingly. However, if they are not found to be so, they would face trial under the ordinary criminal law. The inquiry shall be completed expeditiously, preferably within a period of one month of receipt of a copy of this judgment.”

(3) In compliance of the directions of this court dated 28/6/11, the medical examination of the respondents No. 2 and 3 were again conducted and after assessment of the oral and documentary evidence on record, it was concluded under the impugned order that they were below 18 years of age at the time of commission of offence, i.e. on 6/12/10. Consequently, it was directed by the trial court that the trial of Juveniles be separately conducted by the Juvenile Board and the prosecution was granted liberty to file a separate charge-sheet before the Juvenile Justice Board, Guna for trial of the accused in accordance with law. Being

aggrieved by the impugned findings, the complainant/petitioner has filed the instant revision.

(4) The contention of the learned counsel for the petitioner is that the impugned order passed by the trial judge is contrary to the law and the evidence on record. It is contended that learned trial court failed to consider the evidence in its true perspective while reaching on the conclusion and further fell in considering the ossification test of the respondent no. 2 and 3 in regard to their age. It is submitted that for determining the age of the Juveniles the rules framed under Law were not followed and the decisions in the cases of Ravindra Singh Gorkhi Vs. State of U.P. (2006) 5 SCC 584, Babloo Pasi Vs. State of Jharkhand (AIR 2009 SC 314), Birad Mal Singhvi Vs. Anand Purohit (1988) Supplement SCC 604, regarding the determination of age of the Juveniles were overlooked. It is further pointed out by the learned counsel that the entry of admission made in the School Register is not supported by the Birth Certificate issued by the Municipality of the area as well as the admission forms submitted by the parents of the child. Further, no proof of admission at first school was filed before the trial Judge. Hence, on the basis of the aforesaid submissions, it is contended that the conclusions arrived at by the trial court regarding the age of the juveniles are erroneous and based on no evidence. Therefore, the impugned order is liable to be set aside and the revision deserves to be allowed.

(5) The learned Public Prosecutor for the respondent No.1/State as well as learned counsel appearing for the respondents No. 2 and 3/accused vehemently opposed the prayer and prayed for rejection of the revision.

(6) The point for consideration before this court is whether or not the trial court had applied the correct parameters for determining the age of the accused, who are claiming to be juveniles on the date of occurrence and whether the findings recorded by the trial court are suffered from any illegality or perversity, warranting interference by this court in exercise of revisional jurisdiction ?

(7) Determination of age of a delinquent, particularly in borderline cases, is rather a complex exercise. Hence, before considering the rival contentions of the parties it would be profitable to set out the material provisions of the The Juvenile Justice

(Care and Protection) Act 2000.

Section 7-A. Procedure to be followed when claim of Juvenile is raised before any court.-

(1) Whenever a claim of Juvenility is raised before any court or a court is of opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry take such evidence as may be necessary but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child stating his age as nearly as may be;

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage ,even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be juvenile on the date of commission of the offence under Sub Section (1) it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any passed by a court shall be deemed to have no effect.

Section 49.- Presumption and Determination of Age.- (1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for purpose of giving evidence) is juvenile or a child ,the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary 9but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not stating his age as nearly as may be.

(2) No order of the competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child ,and the age recorded by the competent authority to be the age of the person so brought before it shall for the purpose of

this Act, be deemed to be the true age of that person.

The relevant provision of The Juvenile Justice (Care and Protection of Children) Rules 2007 about the procedure to be adopted in the determining the age of the person by the competent authority is as follows :-

Rule 12.- Procedure to be followed in determination of Age.- (1) In every case concerning a child or a juvenile in conflict with law , the court or the Board or as the case may be the Committee referred to in Rule 19 of these rules shall determine the age of such juvenile or a child or a juvenile in conflict with the laws within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the board or as the case may be the committee shall decide the juvenile or otherwise of the juvenile or a child or as the case may be the juvenile in conflict with the law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with the law ,the age determination inquiry shall be conducted by the court or the Board or as the case may be ,the Committee by seeking evidence by obtaining -

(A) (i) the matriculation certificate or equivalent certificate,if available and in absence whereof;

(ii) the date of birth certificate from the school (other than a school) first attended ; and in the absence whereof ;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat.

(B) and only in the absence of either (i),(ii), or(iii) of clause (A) above, the medical opinion will be sought from a duly constituted Medical Board which will declare the age of the juvenile, or a child. In case assessment of the age cannot be done, the court or the board or as the case may be the committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or the

juvenile by considering his/her age on lower side within the margin of one year and while passing orders in such case shall after taking into consideration such evidence as may be available or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clause (A) (i).(ii).(iii) or in the absence whereof, clause (B) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with the law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in Sub Section (3) the court or the Board or as the case may be the committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required inter alia in terms of Section 7-A, Section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the board after examining and obtaining the certificate or other documentary proof referred to in Sub Rule (3) of this Rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in Subrule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

(8) In the case of Babloo Pasi Vs. State of Jharkhand (AIR 2009 SC 314) the Apex Court held:-

"it is clear that it merely provides that when it appears to the competent authority viz., the Board, that the person brought before it is a juvenile, The Board is obliged to make an enquiry as to the age of that person; for that purpose it shall take evidence as may be necessary and then record a finding whether the person in question is a juvenile or not. Explaining the scope and purpose of Section 32 of the Juvenile Justice Act, 1986 which is almost *pari materia* with Section 49 of the Act in *Bhola Bhagat v. State of Bihar* (1997) 8 SCC 720 this Court had observed

as under :-

".....when a plea is raised on behalf of an accused that he was a "child" within the meaning of the definition of the expression under the Act, it becomes obligatory for the court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially-oriented legislation, it is an obligation of the court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused. The court must hold an enquiry and return a finding regarding the age, one way or the other."

Nevertheless, in *Jitendra Ram alias Jitu v. State of Jharkhand* (2006) 9 SCC 428., the Court sounded a note of caution that the aforestated observations in *Bhola Bhagat* (supra) would not mean that a person who is not entitled to the benefit of the said Act would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit and each case has to be considered on the basis of the materials brought on record.

At this juncture, it is relevant to note that in exercise of power conferred by Section 68 of the Act, the State Government of Jharkhand has framed the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003. Rule 22 thereof lays down the procedure to be followed by a Board in holding enquiries and the determination of age. Sub-rule (5) of the said Rule which is material for the present case reads thus :-

"22. Procedure to be followed by a Board in holding inquiries and the determination of age.-

(1)

(5) In every case concerning a juvenile or a child, the Board shall either obtain.

(i) a birth certificate given by a corporation or a municipal authority; or

(ii) a date of birth certificate from the school first attended; or

(iii) matriculation or equivalent certificates, if available; and

(iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board, (regarding his age and, when passing orders in such case shall, after taking into consideration such evidence as may be available or the medical opinion, as the case may be record a finding in respect of his age)."

Thus, as per Rule 22, in the absence of birth or matriculation certificates, in order to record a finding in respect of age of a person, the Board is required to obtain the opinion of a duly constituted Medical Board. It is clear from a bare reading of the Rule that although the Board is bound to obtain the opinion of the Medical Board but the opinion per se is not a conclusive proof of age of the person concerned. It is no more than an opinion. More so, when even the Medico-Legal opinion is that owing to the variation in climatic, dietic, hereditary and other factors, affecting the people of different States in the country, it would be imprudent to formulate a uniform standard for the determination of the age. True, that a Medical Board's opinion based on the radiological examination is a useful guiding factor for determining the age of a person but is not incontrovertible. Commenting on the evidentiary value of the opinion of a doctor, based on x-ray tests, as to the age of a person, in *Ramdeo Chauhan alias Raj Nath v. State of Assam*(2001) 5 SCC 714., R.P. Sethi, J., speaking for the majority in a three-Judge Bench, had observed that :-

"....An X-ray ossification test may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can by no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned. Too much of reliance cannot be placed upon text books, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform."

It is well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The Medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.”

(9) Now, coming to the facts and circumstances of the present case, it appears that the matter was remitted back by this court with a direction to the trial court, heading the Board to re-determine the age of the accused/ respondents No. 2 and 3 as on the date of commission of the alleged offenses in accordance with the law. It was further ordered that in the event they are found juveniles within the meaning of the Act, they shall be dealt with accordingly. However, if they are not found to be so, they would face trial under the ordinary criminal law. Pursuant thereto, the trial court examined the statements of Jubeda Bee, mother of accused/juveniles (CW-3) Deepak Kumar Soni (CW-2) and also examined the progress reports of Shakir from year 2001 to 2008, i.e. from class 2nd to class 8th in which his birth of date was shown to be 5/2/1994. As per his ossification test, approximate age of Shakir was shown above 18 years but below 20 years and on examination of the statement of witness Jubeda Bee and documents filed before the trial court, the progress-cum-statements of marks obtained in examinations conducted by Marshi Dayanand Saraswati Vidhayala, Guna, the date of birth of Saddam is shown 1/1/1993 and as per ossification test report conducted in the District Hospital his age is shown above 19 years but below 21 years. It is mentioned in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 that where the assessment of the age is not possible, the court or the board or as the case may be, the committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or the juvenile by considering his/her age on lower side within the margin of one year and while passing orders in such case shall after taking into consideration such evidence as may be available or the medical opinion as the case may be, record a finding in respect of his age. Thus, after taking into account the aforesaid provisions of Rule 12 and the evidence coupled with medical opinion on record, the learned trial court concluded that the respondents No.2 and 3 were below 18 years of age at the time of commission of

offence. The said findings are recorded as per law and the Rules framed as discussed herein above.

(10) In view of what has been stated above, the impugned order passed by the trial Court cannot be said to be illegal or improper. Hence same stands hereby confirmed dismissing the revision.

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